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STAFF DIRECTOR

# Congress of the United States

## House of Representatives

### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 17, 2013

Mr. James C. Cox  
Medicaid Inspector General  
Office of the New York State Medicaid Inspector General  
800 North Pearl Street  
Albany, NY 11204

Dear Mr. Cox:

The Committee on Oversight and Government Reform continues its oversight of New York State's Medicaid program. Earlier this year, the Committee issued a bipartisan report on the program, which concluded that the State has "misspen[t] tens of billions of Federal tax dollars over the past few decades."<sup>1</sup> We sent you a letter on April 15, 2013, requesting documents and communications relevant to the Committee's oversight of New York State's Medicaid program. You refused to provide the Committee with most of the information that we requested.

Moreover, we were alarmed to learn that you and your staff advised an employee not to provide information to the Committee, under the threat of disciplinary action. Title 18 of the U.S. Code prohibits the use of threats to impede a congressional inquiry.<sup>2</sup> We are disappointed by your unwillingness to cooperate and we urge you to reconsider your posture towards the Committee's effort to safeguard the taxpayer dollars that are being misspent on New York's Medicaid program.

<sup>1</sup> REPORT BY THE H. COMM. ON OVERSIGHT & GOV'T REFORM, "Billions of Federal Tax Dollars Misspent on New York's Medicaid Program," HOUSE OF REPRESENTATIVES REPORT 113-11 (Mar. 5, 2013).

<sup>2</sup> 18 U.S.C. § 1505. The relevant portion of the statute states: "Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both."

***Your Staff Threatened an Employee Who Communicated with Congress***

An e-mail from your office's Director of Employee Relations to an employee who agreed to cooperate with the Committee appears to run afoul of 18 U.S.C. Sec. 1505, which prohibits any attempt to influence, obstruct, or impede a congressional investigation by threatening witnesses with adverse personnel actions.<sup>3</sup> The e-mail stated:

You are not authorized to speak on behalf of the OMIG, or regarding OMIG matters, without specific authorization from AC&C using the procedure described in APPM Item 634.20. If you do so, **you do so at your own risk, and may subject yourself to administrative action, including potential discipline.**<sup>4</sup>

This warning - which included a threat of potential disciplinary action - is likely to have a chilling effect on the willingness of OMIG employees to cooperate with the Committee's review of this matter. For this reason, warnings such as this are prohibited by statute. Any further actions by you or your staff that are meant to intimidate current or former OMIG employees will not be tolerated. With that in mind, please advise all OMIG employees as to their rights regarding communicating with Congress and whistleblower protections. Please also make OMIG managers aware of the consequences for retaliation against witnesses who furnish information to Congress.<sup>5</sup> Additionally, by June 20, 2013, please identify in writing all actions taken by the Office of the General Counsel to advise employees of their right to voluntarily communicate with the Committee, including the date of any such action.

***You Refused to Provide Documents to the Committee***

Your refusal to provide documents and communications requested by the Committee is further evidence that New York does not want to bring greater transparency to the State's Medicaid program and in particular, the State's oversight of the program. For example, last year, the State refused to provide information to the Committee related to large federal overpayments received by the State through its Medicaid program after informing the Committee that the relevant information had been gathered.<sup>6</sup> A special counsel for Governor Cuomo wrote the Committee, "We aren't sure responding to the

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<sup>3</sup> *Id.*

<sup>4</sup> E-mail from Matthew R. Chiesa to Cary Zigrossi (Jun. 7, 2013). (emphasis added)

<sup>5</sup> 5 U.S.C. § 7211 states: The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

<sup>6</sup> E-mail from Alexander Cochran, Special Counsel to the N.Y. State Governor, to Comm. Staff (Sept. 4, 2012) (on file with Committee).

Mr. James Cox

June 17, 2013

Page 3

Committee's request at this time when we are working through these issues serves the best interests of the State.”<sup>7</sup>

The Committee's bipartisan report contained a section that discussed widespread reports of problems within your agency, the Office of the Medicaid Inspector General (OMIG). For example, the report cited a news article from last year which quoted several current and former employees criticizing OMIG for becoming a “politicized, dysfunctional, mismanaged, and ineffective agency where many of the 500 or so employees have little to do” during your tenure.<sup>8</sup> Last year, the *New York Times* reported that OMIG oversight became much less vigorous after you replaced James Sheehan as Medicaid Inspector General, and important audits became “caught between the Legislature's allegiances to campaign contributors from the health care field and the governor's plans to cut Medicaid costs.”<sup>9</sup>

On April 29, 2013, an OMIG Deputy Counsel agreed to provide the Committee with all the documents and information the Committee requested on a rolling basis, with the document production to be completed on or around May 29, 2013.<sup>10</sup> Also on April 29, 2013, you provided the Committee with two of the ten items requested in our April 15, 2013 letter.<sup>11</sup> On May 3, 2013, you wrote that you had produced via First-Class Mail documents responsive to two other requested items related to OMIG's audits of Marra Pharmacy and Town Total Health.<sup>12</sup> The Committee has not yet received these documents, and the mail contractor for the House of Representatives informed Committee staff they have not received any First-Class Mail from you or your office addressed to the Committee.<sup>13</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> James M. Odato, *Fraud Agency Called Adrift*, ALBANY TIMES UNION (Nov. 18, 2012), available at <http://www.timesunion.com/local/article/Fraud-agency-called-adrift-4047131.php>.

<sup>9</sup> Nina Bernstein, *Under Pressure, New York Moves to Soften Tough Medicaid Audits*, N.Y. TIMES (Mar. 18, 2012), available at <http://www.nytimes.com/2012/03/19/nyregion/new-medicaid-inspector-general-supports-less-adversarial-audits.html>.

<sup>10</sup> E-mail from Comm. Staff to Sarah Dasenbrock, Deputy Counsel, Office of Medicaid Inspector General, N.Y. State (Apr. 29, 2013) (on file with Committee).

<sup>11</sup> Letter from James C. Cox, Medicaid Inspector General, N.Y. State, to Rep. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Rep. James Lankford, Chairman, Subcomm. on Energy Policy, Health Care & Entitlements (Apr. 29, 2013) (on file with Committee).

<sup>12</sup> Letter from James C. Cox, Medicaid Inspector General, N.Y. State, to Rep. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, and Rep. James Lankford, Chairman, Subcomm. on Energy Policy, Health Care & Entitlements (May 3, 2013) (on file with Committee).

<sup>13</sup> Telephone Conversation between Comm. Staff and Pitney Bowes (June 3, 2013).

Mr. James Cox

June 17, 2013

Page 4

Specifically, you have failed to provide the Committee with the following documents:

- All documents and communications referring or relating to Marra Pharmacy or John McDonald from the period of January 1, 2008, through the present;
- All documents and communications referring or relating to Visiting Nurse Service of New York from the period of January 1, 2008, through the present;
- All documents and communications referring or relating to Town Total Health (located in New York City) from the period of January 1, 2009, through the present;
- All documents and communications between OMIG employees or representatives and any employee or representative of any other state agency referring or relating to the new audit protocols from the period of January 1, 2010, through the present;
- All documents and communications between the OMIG employees or representatives and any employee or representative or health provider associations and/or individual health providers relating to the promulgation of new audit protocols from the period of January 1, 2010, through the present;
- All documents and communications referring or relating to the final promulgation of new audit protocols from the period of January 1, 2010, through the present; and
- Copies of all reports issued by Paul Miller or LogicalWave Technologies, Inc. to OMIG from the period of January 1, 2009, through the present.

New York's Medicaid program, historically the largest in the country, is estimated to spend \$56 billion on Medicaid this year.<sup>14</sup> The American people have a right to know how their tax money is being spent. We reiterate our request that you produce all of the documents and communications, which include all internal communications, originally requested in our April 15, 2013, letter. Failure to comply with this request by July 1, 2013, will force the Committee to consider the use of compulsory processes.

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<sup>14</sup> James M. Odato, *State's Medicaid Faces Audit After \$15B in Overbilling*, ALBANY TIMES UNION (Feb. 15, 2013), available at <http://www.timesunion.com/local/article/State-s-Medicaid-faces-audit-4280563.php>.

Mr. James Cox

June 17, 2013

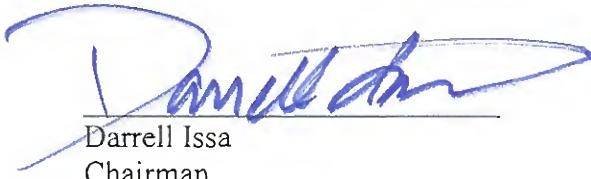
Page 5

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

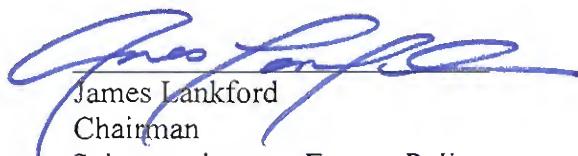
When producing documents, please deliver production sets to the Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format.

If you have any questions about this request, please contact Committee Staff at 202-225-5074. Thank you for your attention to this matter.

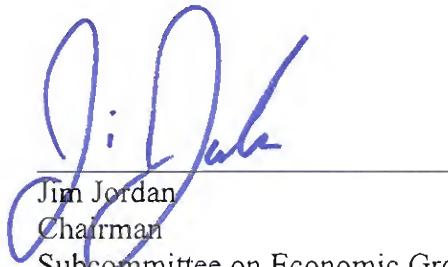
Sincerely,



Darrell Issa  
Chairman



James Lankford  
Chairman  
Subcommittee on Energy Policy,  
Health Care and Entitlements



Jim Jordan  
Chairman  
Subcommittee on Economic Growth,  
Job Creation and Regulatory Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member  
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matthew A. Cartwright, Ranking Minority Member  
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs